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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN, )  
)  
Plaintiff, )  
)  
v. )  
)  
LEISNOI, INC., KONIAG, INC., and )  
DIRK KEMPTHORNE, Secretary of the )  
Interior, )  
)  
Defendants, )  
)  
\_\_\_\_\_)  
)  
KONIAG, INC., )  
)  
Counter-claimant, )  
)  
v. )  
)  
OMAR STRATMAN, )  
)  
Counter-claimed )  
Defendant. )  
\_\_\_\_\_)

Case No.: 3:02-cv-0290 (JKS)

**OMAR STRATMAN S MOTION TO STRIKE OR STAY LEISNOI S MOTIONS TO  
DISMISS, AND REQUEST FOR CLARIFICATION OF THE COURT S ORDER OF  
JANUARY 18, 2007**

Over the course of the last week, Leisnoi filed five (5) separate and successive motions for dismissal of this action, alleging several grounds (Dk. 107, 109, 111, 118-1, 120). Of these five motions, only the last motion, Dk. 120, is responsive to this Court's order of January 18, 2007, which required the defendants to each file a motion to dismiss for lack of jurisdiction, specifically addressing the issues outlined in the Court's order. (Dk. 103).

The other four motions are completely unrelated to the order. This was noted by Leisnoi itself in its fifth, responsive motion:

LeisnoiLeisnoi has filed aLeisnoi has filed a series ofLeisnoi has filed a series of motions add  
CourtCourt lacks subjCourt lacks subject mCourt lacks subject matter jurisdiction, such a  
estoppel,estoppel, lapsing of the statute ofestoppel, lapsing of the statute of limitations, estoppel,  
lack of judicial standing, and mootness due to the FRITLA ratification.

(Dk. 120, p. 6 n. 2).

Leisnoi sLeisnoi s filLeisnoi s filinLeisnoi s filing of these multiple motions violates the spirit, if not the letter, of Court sCourt s order of January 18, 2007. As the Court willCourt s order of January 18, 2007. As the Court has already set aside its previous order for a status conference in order to, among other things, establish a briefing schedule, basedbased on the filing of motions and crossbasbased on the filing of motions and crossbased on the filing of motions and cross procedureprocedure defined by the Court. (Dkprocedurdefined by the Court. (Dk. 97) Leisproc arguingarguing thatarguing that a status conference was premature,arguing that a status conference was premature, andand determine whetherand determine whether it hadjurisdictionand determine whether it hadjurisdiction over the matter, thatthatthat Sthat Stratman s challenge was moot. (Dk. 99). In its order of January 18, 2007, the

Court agreed that a status conference was premature, and jurisdictional issues regarding review of the Secretary's decision. Defendants were directed to file separate briefs addressing the specific issues outlined in the Court's order. Stratman's opposition to these motions within 30 days, and the defendants were to oppose within 15 days.

Implicit in the Court's order, as Stratman understands it, was that proceedings on Stratman's claim would be held in abeyance pending the jurisdictional issues outlined in the Court's order. Also implicit in that order is that if the Court subsequently concludes that it has jurisdiction, it will hold a status conference to establish a briefing schedule to address the

Leisnoi's filing of these multiple motions to dismiss is precisely the type of multiplicitous briefing and piece-meal litigation that the Court has repeatedly moved to establish a briefing schedule. As was the case with the conference, the specified procedure under Local Rule 10.1 to the District Court under the APA, provides for motions to be filed in the form of motions and cross-motions for summary judgment.

For the foregoing reasons, Stratman requests that the Court dismiss the motions filed by Leisnoi (Dks. 107, 109, 111, 118-1) that are unrelated to the issues outlined in the Court's order of January 18, 2007, and direct Leisnoi to assert and re-file them in conformity with the briefing schedule that may be ordered by the Court. In the alternative, Stratman requests that the Court stay any further briefing on Leisnoi's motions pending the Court's decision on the jurisdictional issues.

jurisdictional issues, and extend the time for filing Stratman's response jurisdictional issues, and extend until further order of the Court. Stratman requests that these motions be stricken, until further order of the Court, than stayed, so that they can be re-filed by Leisnoi as a single brief, in compliance with the requirements of any subsequently ordered briefing schedule. Rule 16.3(c) provides for the filing of the parties' principal briefs in the event of a cross-motion for summary judgment. There is no reason why Leisnoi should be required to include the arguments presented in a single motion or cross-motion for summary judgment. The requirement that filings by a single party is of even greater importance in this case, as Stratman must already now respond to three separate filings by three separate defendants. Requiring Stratman to respond to multiple filings by each party, with the addition of a large number of other motions filed by the other parties, would not only strain the Court's resources, but would needlessly consume Stratman's time and resources, and delay the determination of the remaining legal issues presented in this action.

For the same reasons, Stratman also requests that the Court grant his motion for further substantive motions, by any party, to be heard on the merits of the jurisdictional issues identified in the Court's order of January 18, 2007.

As a related matter, Stratman also seeks clarification of the Court's order of January 18, 2007 regarding the issues that the Court addressed in its order of January 18, 2007 regarding the context of the motions to dismiss for lack of due diligence. It is not entirely clear to Stratman from the Court's order whether he is required to file in the initial round of briefing to address and brief the merits of the Secretary's decision, in addition to the jurisdictional issues.

identify four discrete issues that it wanted the parties to brief, including:

1) whether the Court has jurisdiction under the APA to review the IBLA's decision, notwithstanding IBLA's determination that it lacked jurisdiction to review Stratman's challenge, in view of the Secretary's legal conclusion that the matter is discretionary and that the Secretary's review of IBLA's decision is discretionary.

2) whether the Court has jurisdiction over Stratman's APA challenge to the Secretary's determination that Congress mooted Stratman's challenge to ANILCA Section 1427.

3) in the event the Court finds that it has jurisdiction to review the Secretary's decision in the context of Stratman's APA action, whether the Chevron deference standard of review applies in reviewing the Secretary's decision and determining the merits of Stratman's APA claim.

4) in the event the Court finds that it has jurisdiction to review the Secretary's decision in the context of Stratman's APA action, and that the Chevron deference standard of review applies to the Secretary's decision, whether Chevron deference requires the Court to accept the Secretary's interpretation of ANILCA that Congress mooted Stratman's challenge by enacting that statute.

The first two issues clearly relate to the preliminary question of whether the Secretary has jurisdiction to review the Secretary's decision to deny Stratman's challenge. However, the third and fourth issues go beyond the threshold issue of whether the Court has jurisdiction to review the Secretary's decision to deny Stratman's APA challenge to the Secretary's decision.

Secretary's decision is subject to a deferential other standard of review, is one of the primary merits of Stratman's challenge to the Secretary's decision, and this Court determines that it has the jurisdiction to review any applicable standard of review. The fourth issue, of whether Chevron deference, if it applies at all, requires the Court to accept the Secretary's decision to the heart of Stratman's challenge. Whether or not the Secretary's decision is a permissible construction of ANILCA Section 101(2)(B), as accepted under Chevron, are key issues in determining the merits of Stratman's APA challenge, and require the examination of both the statute and the analysis and interpretation of the statute adopted in 1971 and the analysis and interpretation of the statute adopted in 1971. These last two issues are unrelated to the first two preliminary jurisdictional issues, and go directly to the merits of Stratman's APA challenge to the Secretary's decision.

In its order of January 18, 2007, the Court directed the dismissal of the motion to dismiss for lack of jurisdiction, and imposed the burden in bringing such a motion. The defendant has both an opening and a reply brief, while Stratman has only an opening brief. While this briefing schedule may be appropriate for jurisdictional issues outlined above, it may not be appropriate for issues, which go to the merits of Stratman's APA challenge, the burden of proof, as the appellant in this action.

We wish to advise the Court that Koniag has recently sought, and agreed, that Koniag could have an additional week, until

Koniag, Koniag, as Koniag, as we understand it, intends to file a single brief in support of Koniag, as we understand it, because Koniag believes its positions are interrelated. Koniag, as we understand it, has no objections to Stratman filing a single brief in response to Stratman's briefing deadline back an additional week in consideration of the additional time sought by Koniag. The parties are working towards a stipulation that the parties may reach does not necessarily address all the stipulation that the parties may reach set forth above, and the stipulation may not be agreed to by all concerned. a stipulation has not yet been agreed to by all concerned. the stipulation that the parties may reach does not necessarily address all the stipulation that the parties may reach set forth above, and the stipulation may not be agreed to by all concerned. January 18, 2007, order.

Accordingly, Stratman requests that the Court enter an order granting Stratman an opportunity to file additional briefing, and limit the parties' briefing to the issues that go to the merits of his claim. In view of the numerous issues involved, and the fact that Stratman will file memoranda filed by each of the defendants, memorializing his opposition, he requests that the Court suspend the page restrictions that would normally apply to his opposition.

RESPECTFULLY submitted this 9th day of March, 2007.

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**CERTIFICATE OF SERVICE**

I hereby certify that *OMAR STRATMAN'S MOTION TO STRIKE* was served electronically on the 9th day of March, 2007, on Bruce M. Landon, R. Collin Middleton, and John R. Fitzgerald.

s/Michael J. Schneider